IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

FLEENOR DEVELOPMENT COMPANY, INC. Plaintiff, v. ALARM SECURITY GROUP, LLC, Defendant.	))))))))))	NO. ___________________

COMPLAINT

COMES NOW Plaintiff Fleenor Development Company, Inc. ("Fleenor") and for its Complaint against Defendant Alarm Security Group, LLC ("ASG") states as follows:

The Parties, Jurisdiction, and Venue

1. Plaintiff Fleenor Development Company, Inc. is a corporation organized under the laws of the State of Tennessee, having its principal place of business located at 12220 W. Aston Court, Knoxville, Tennessee 37934-1528.

2. Defendant Alarm Security Group, LLC is a limited liability company organized under the laws of the State of Delaware, having its principal place of business located at 1035 N. 3rd Street, Suite 101, Lawrence, Kansas 66044-1491. ASG may be served with process through its registered agent, National Corporate Research, Ltd., Inc., 992 Davidson Drive, Suite B, Nashville, Tennessee 37205-1051.

3. Jurisdiction is conferred upon this Court pursuant to 28 U.S.C. § 1332(a).

4. Venue in this District is proper pursuant to 28 U.S.C. § 1391(b).

5. This Court has personal jurisdiction over ASG because ASG is present within or has minimum contacts with the State of Tennessee and the Eastern District of Tennessee; ASG

has purposefully availed itself of the privileges of conducting business in the State of Tennessee; ASG is registered to do business in the State of Tennessee and has an registered agent for service of process in the State of Tennessee; ASG regularly conducts business in the State of Tennessee; and Fleenor's cause of action arises directly from ASG's business contacts and other activities in the State of Tennessee and the Eastern District of Tennessee.

Facts

6. Prior to February 12, 2015, Fleenor provided installation, maintenance, and monitoring of security and fire alarm systems for residential and commercial customers, primarily in East Tennessee. (At that time, Fleenor was named FPS, Inc. It subsequently changed its name to Fleenor Development Company, Inc.)

7. In 2014, Fleenor and ASG began discussing a transaction pursuant to which ASG would acquire Fleenor's customer contracts and business assets.

8. From the beginning of the parties' discussions, the purchase price was based on a multiple of "Recurring Monthly Revenue" or "RMR." The term "RMR" is used within the security monitoring industry to represent the recurring monthly revenue that a security monitoring company receives from its customers.

9. Prior to the preparation of a final written agreement, Fleenor and ASG negotiated the terms of their contract.

10. The parties agreed that the final purchase price paid by ASG would be equal to a multiple of thirty-eight (38) times the performing RMR at the closing, i.e., the "Performing RMR." The parties defined "Performing RMR" as RMR that was (i) less than ninety (90) days past due from the closing date; (ii) from customers for whom Fleenor had the exclusive contractual right to use all of the telephone lines and numbers applicable to such customers'

accounts; and (iii) where the customer had not communicated the intent to cancel. The Performing RMR at the date of the closing is also called the "Closing RMR."

11. The parties also agreed that a portion of the purchase price would be retained by ASG (the "Holdback Amount").

12. The parties agreed that at the end of a 12-month period following the closing, the Holdback Amount would be reduced by an amount equal to 38 times the purchased RMR that was not "Performing RMR" as of the end of the 12-month period, with the exception of the first 7% of annualized attrition, which would be assumed by ASG. The remainder of the Holdback Amount would be paid to Fleenor.

13. In other words, if the attrition rate for the RMR purchased by ASG at the closing was 7% or less, the entire Holdback Amount would be paid to Fleenor.

14. The parties' agreements on these issues were set forth in a written letter of intent.

15. The parties had reached an agreement on the attrition rate because some attrition is common in the security monitoring industry and to be expected in any security monitoring business. The parties had agreed that normal attrition would not result in a reduction of the purchase price payable to Fleenor. ASG engaged a consulting firm to review Fleenor's customer files. Among other tasks, the consulting firm analyzed and confirmed Fleenor's attrition rates for the two years prior to the closing. The consulting firm determined that Fleenor's 6-month rolling attrition rates varied between 5.2% and 7.7%, as measured in RMR dollars and in number of customer accounts, respectively. This attrition rate is well below the 10% national average for similar businesses in the electronic security industry.

16. On or about February 12, 2015 (the "Closing Date"), Fleenor and ASG executed a written Agreement for Purchase and Sale of Assets (the "Written Agreement").

17. Pursuant to the Written Agreement, ASG purchased the assets of Fleenor for a purchase price equal to thirty-eight (38) times Fleenor's RMR, with certain adjustments (the "Purchase Price"). The final net Purchase Price was $6,885,804.82. The final amount of RMR purchased by ASG was $209,423.55.

18. ASG retained an eight percent (8%) balance of the Purchase Price as the Holdback Amount, in the amount of $636,647.60.

19. The Written Agreement did not reflect the real and true understanding of the parties regarding the Holdback Amount, however.

20. Specifically, Section 6.4 of the Written Agreement provides:

> At the end of the Initial Holdback Period and at the end of the Holdback Period, ASG will in good faith determine the "Non-Performing RMR" (as such term is hereinafter defined). If any of the RMR as calculated at the Closing Date (herein the "Closing RMR"), is determined to be Non-Performing RMR, either at the end of the Initial Holdback Period or the Holdback Period, then in such event, there shall be deducted from the Holdback Amount, at the end of the Initial Holdback Period or the Holdback Period, without duplication as to any Non-Performing RMR, a sum equal (x) to the amount of the Non-Performing RMR multiplied by (y) a factor of thirty-eight (38). The deductions, if any, pursuant to Section 6.4, are herein referred to as the ("RMR Deduct"). **Anything contained herein to the contrary notwithstanding, in calculating the RMR Deduct, (i) there shall be excluded an amount equal to seven (7%) percent of Non-Performing RMR;** (ii) to the extent that a customer who has terminated service and is included in the calculation of Non-Performing RMR has vacated the premises at which the alarm services where furnished and a new occupant who has moved into those premises, enters into a Standard Form Alarm Service Contract with ASG and meets the other criteria for valid RMR as set forth in Section 2.3.1 hereof ("New Account"), then in such event if the New Account has been "cut-in" prior to the last day of the Initial Holdback Period or the Holdback Period, as the case may be, the amount of the New Account RMR shall constitute a credit to the Company in the calculation of the Purchase Price Deduct; (iii) to the extent that a customer who has terminated service and is included in the calculation of Non-Performing RMR has vacated the premises at which the alarm services where furnished, relocates to a new premise and then enters into a new Standard Form Alarm Service Contract with ASG and meets the other criteria for valid RMR as set forth in Section 2.3.1 hereof ("Resigned Account"), then in such event if the Resigned Account has been "cut-in" prior to the last day of the Initial Holdback Period or the Holdback Period, as the case may be, the amount of the Resigned Account RMR shall

> constitute a credit to the Company in the calculation of the Purchase Price Deduct; and (iv) any Non-Performing RMR as of the Closing Date which becomes performing RMR within the definition of RMR set forth in Section 2.3.1 either (a) during the Initial Holdback Period, and then maintains such status throughout the Holdback Period, or (b) during the Holdback Period, and then maintains such status throughout the Holdback Period, shall be used to offset a comparable amount of Non-Performing RMR included in the RMR Deduct calculation.

(Emphasis added.)

21. The Written Agreement provided that "seven (7%) percent of Non-Performing RMR" would be excluded, but, based on the parties' agreement, it should have provided that "seven (7%) percent of Closing RMR" would be excluded. Therefore, an error or mistake occurred in reducing the parties' agreement to writing.

22. Section 6.4.1 of the Written Agreement addresses "Non-Performing RMR" and provides:

> For purposes of this Section 6.4 and the Agreement, Non-Performing RMR is RMR as measured as of the close of business on the day immediately preceding the Closing Date attributable to customers who on, or after, the Closing Date (i) are, or become, more than ninety (90) days past due from an applicable invoice billing date and whose account is not current at the end of the Initial Holdback Period or the Holdback Period, unless the customer is identified on the Slow Pay Account List as set forth on Schedule 2.3.1 (viii); (ii) canceled, given notice of cancellation (written or otherwise) or failed to renew for any reason; or (iii) for any other reason, no longer meets the definition of RMR as set forth in Section 2.3.1.

23. The "Holdback Period" ended twelve months after the Closing Date. Thus, the Holdback Period ended February 11, 2016.

24. Based on the status of the accounts as of February 11, 2016, the parties have agreed on the amounts that would be deducted from or credited to the Holdback Amount as Non-Performing RMR without the 7% exclusion, per Section 6.4 of the Written Agreement. They are as follows:

Category	Amount	Written Agreement Provision
RMR Cancellations	($13,071.26)	Sec. 6.4.1(ii)
RMR Reduction	($2,837.53)	Sec. 6.4.1(iii)
RMR Over 90	($2,735.90)	Sec. 6.4.1(1)
Pending Cancels	($435.00)	Section 6.4.1(ii)
Less: Resigns	$1,553.00	Sec. 6.4(iii)
Less: Reinstated RMR	$3,305.70	Sec. 6.4(iv)
Total	**($14,220.99)**	

25. Seven percent (7%) of the Closing RMR is $14,659.65.

26. Because the amounts that would have been deducted from or credited to the Holdback Amount as Non-Performing RMR without the seven percent (7%) exclusion ($14,220.99) is less than seven percent (7%) of the Closing RMR ($14,659.65), no amount should have been deducted from the Holdback Amount. In short, the annualized attrition rate was less than seven percent (7%).

27. The entire Holdback Amount of $636,647.60 is due and payable to Fleenor from ASG.

28. Fleenor has made demand upon ASG for payment of the entire Holdback Amount.

29. ASG has refused to comply with the parties' agreement and pay Fleenor the entire Holdback Amount.

Count I: Reformation of Contract

30. Plaintiff repeats and realleges every allegation in paragraphs 1 through 29 of this Complaint as if fully set forth herein.

31. Fleenor and ASG reached a prior agreement that the Holdback Amount would not be reduced until the Non-Performing RMR at the end of the Holdback Period exceeded seven percent (7%) of the Closing RMR.

32. Fleenor and ASG intended that their prior agreement be included in the Written Agreement.

33. The Written Agreement differed materially from the parties' prior agreement regarding the seven percent (7%) exclusion and the Holdback Amount.

34. The variation between the parties' prior agreement and the Written Agreement is not the result of gross negligence on the part of Fleenor.

35. Fleenor executed the Written Agreement in the belief that it embodied the real understanding of the parties.

36. The variation between the parties' prior agreement and the Written Agreement constitutes a mistake in the expression or integration of the agreement.

37. ASG has refused to allow the Written Agreement to be reformed to express the real and true understanding of the parties.

38. Fleenor is entitled to reformation of the Written Agreement to express the real and true understanding of the parties.

Count II: Breach of Contract as Reformed

39. Plaintiff repeats and realleges every allegation in paragraphs 1 through 38 of this Complaint as if fully set forth herein.

40. Pursuant to the parties' agreement, the Holdback Amount should not be reduced until the Non-Performing RMR at the end of the Holdback Period exceeds seven percent (7%) of the Closing RMR.

41. Pursuant to the parties' agreement, the full Holdback Amount is due and payable by ASG to Fleenor.

42. ASG has materially breached the contract by refusing and failing to pay the full Holdback Amount to Fleenor.

43. ASG's breach of the agreement with Fleenor has caused damages to Fleenor in the amount of $636,647.50.

WHEREFORE Plaintiff prays that the Court:

a. Enter Judgment granting reformation of the written agreement to express the real and true understanding of the parties;

b. Enter Judgment against Alarm Security Group, LLC and in favor of Fleenor Development Company, Inc. in the amount of $636,647.50; and

c. Enter such other relief as the Court determines is just and proper.

Respectfully submitted this 26th day of May, 2016.

/s/ Wilson S. Ritchie

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